

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TUAN QUANG,)	
)	
Petitioner,)	8:05cv429
)	
vs.)	MEMORANDUM AND ORDER
)	
INS ¹ ,)	
)	
Respondent.)	

This matter is before the court on filing no. 13, my Memorandum and Order granting the petitioner, Tuan Quang, until April 26, 2006 to notify the court in writing whether he wishes to pursue a challenge to the order of removal or deportation on which the detainer lodged against him by the respondent, the U.S. Bureau of Immigration and Customs Enforcement ("BICE"), is based. The detainer alone may not be challenged in a habeas corpus action. However, if, in addition to a detainer, there is a final order of removal or deportation in effect, as in the petitioner's case, the petitioner may challenge that order of removal or deportation in the appropriate Court of Appeals. Rosales v. BICE, 426 F.3d 733, 735-36 (5th Cir. 2005); Simmonds v. INS, 326 F.3d 351, 356 & n.5 (2d Cir. 2003).

In filing no. 13, I advised the petitioner that in the absence of a timely response regarding whether he wished to proceed with a challenge to the order of removal or deportation, this case would be dismissed without prejudice. There has been no response by the petitioner, and the deadline has now expired. Therefore, the Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2241 by the petitioner and the above-entitled

¹"As a result of the Homeland Security Act of 2002, Pub.L. No. 107-296, 116 Stat. 2135 (2002), the INS has ceased to exist as an agency within the United States Department of Justice. Its enforcement functions now reside in the Bureau of Immigration and Customs Enforcement (BICE) within the Department of Homeland Security." Jordan v. Attorney General of the United States, 424 F.3d 320, 324 n. 3 (3d Cir. 2005). Therefore, for the purposes of this case, I substitute the U.S. Bureau of Immigration and Customs Enforcement ("BICE") for the named respondent, U.S. Immigration and Naturalization Service ("INS").

action will be dismissed without prejudice. A separate judgment will be entered accordingly.

SO ORDERED.

April 29, 2006.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge